

CLARIFICATIONS FROM THE COMMISSION

John Bullington, Vice Chairman with assistance
from Andrew Easton and Ed Campbell

This is the second of two articles addressing questions received by the commission from the state's appraisers concerning various rules and definitions of terminology used. Hopefully the two articles will bring understanding to the commission's interpretation of the rules and terminology.

Our discussion on the interview with Mr. Wiley concludes with his response when he was asked to address the matter of the aging of **prior** sales of comparables. Mr. Wiley noted the differences between the requirements of USPAP and Fannie Mae on this aspect of the appraisal process:

I can say with certainty that I know what USPAP says about sales history; you must provide a minimum of three years sales history on the subject property and you must analyze any current listing option agreement of sale on the subject property. USPAP does not address any information of that nature in regard to the comparable sales. My understanding of the Fannie Mae requirement, based on my conversations with Joe Minnick, is that you are to provide (regardless of the form that you use) the previous sale of the comparable regardless of when it occurred. There is confusion on this because Fannie Mae Form 1004 indicates sales within the past year (for comparables). The new Fannie Mae forms are printed with the wording "*last sale*." They no longer say "...*prior sales within year of appraisal*". The new forms reflect the current requirement to provide the previous sale regardless of when it occurred.

This is a very common misunderstanding. Most appraisers, I think, are providing either 1 year or 3 years history on comparables. They are not doing what Fannie Mae intends; that is, to provide (data on) the last sale regardless of when it occurred.

The following is a re-print of a document obtained from the Y.T. and Louise Lee Lum Library of the Appraisal Institute commenting on the issues of "re-addressing" appraisals, "re-assigning" appraisals, and "re-appraising" properties.

RE-ADDRESSING, RE-ASSIGNING, RE-APPRAISING: DO'S & DON'T'S **BY Stephanie Coleman, MAI, SRA**

Appraisers are often confronted with one of a variety of questions relating to the same general problem. The scenario is as follows: You completed an appraisal assignment for a client some time back-maybe a year ago, a month ago, a week ago-and now another party wants your opinion of the value of the same property. The request may be to simply "re-address" the appraisal report you prepared for the previous client. Or the request may be to "re-certify" the appraisal, or to "re-assign" it. Other times, the request may be for you to provide an "update", or a "letter update". And other times the requesting party has no knowledge of, and therefore doesn't mention, the previously prepared report. How should you respond to such requests?

First, make sure you understand what is being requested. The requesting party might not know what he or she needs, or might use labels or terms such as "re-certification" to mean something quite different from what appraisers would take them to mean. Once you are clear on what the requesting party is asking you to do, the following **Q & A's** might help you decide how to respond:

1. Q. To whom can I give the assignment results?

A. *Assignment results* are your *opinions and conclusions* developed specific to an assignment. Examples include your final value opinion, your highest and best use conclusion, and your indications of value from any of the approaches used.

The Confidentiality Section of the ethics Rule says that the appraiser must not disclose confidential information or *assignment results* to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee.

Assignments results are presented in the written appraisal report, but they may be revealed in other ways. Sometimes, if an appraiser is not careful, they can be revealed inadvertently. For example, an appraiser who in casual conversation tells another appraiser, another client or anyone else, "I appraised that property for

\$1,000,000” is divulging assignment results.

2. Q. To whom can I give a copy of the report prepared for a client?

A. This question addresses the physical, written appraisal report. Keep in mind that not all portions of the report are confidential. For example, factual data such as sales comparables are not confidential. Descriptions of the location (neighborhood description, region description, etc) are not confidential. However, since the report contains *assignment results*, which are included in the Confidentiality Section of the Ethics Rule, the authorization process stated above in #1 applies. This means that a copy of the report can't be given to, revealed to, or shared with anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee.

3. Q. Can I accept a new assignment to appraise the same property for another client?

A. Yes. However, you cannot disclose, without permission, any confidential information contained in the previous report. Again, the primary concern is *confidentiality*. In completing a new appraisal assignment involving the same property for a second client, would you need to disclose information that was considered to be confidential by the first client? If so, you can't take on the assignment without obtaining prior permission of the first client to release that confidential information.

In many cases, preparing a new appraisal for a second client would not require the appraiser to divulge any confidential information. Sometimes the appraisal report prepared for the first client has already been made available to the second client. For example, a lender/client might have given a copy of the report to the borrower who in turn gave it to another lender/client. Or the appraisal report prepared for the first client might have been made a matter of public record. In cases such as these, the information in the appraisal report is no longer confidential between the appraiser and the first client. Once you have been assured that the second client is in possession of, or has rightful access to, the appraisal report prepared for the first client, you may prepare another appraisal of the same property for the second client without breaching confidentiality.

A common misconception is that entering into an appraiser-client relationship to complete an assignment involving a property means that the appraiser then has an *interest* with regard to that client or that party. Such a notion is inconsistent with the requirements of the Ethics Rule, which are restated in the appraiser's certification, for the appraiser to be unbiased, impartial and objective. Just because you complete an appraisal for a client doesn't mean you then have an "interest" in the property or with respect to the parties; if this were the case, there would be more serious questions of ethics involved.

Another common misconception is that you must be "released" by the first client to accept the assignment with the second. The only "release" required is with regard to confidential information. The first client does not need to give permission for you to proceed with another assignment for a second client unless confidential information is at stake.

One caveat: If the client for the second appraisal assignment is a federally insured depository institution and the intended use is in connection with a federally related transaction, the appraiser should disclose in the appraisal report any previous assignments involving the same property and the identity of the client(s). This is because appraiser independence was one of the primary concerns that lead to the implementation of the appraisal requirements of FIRREA. These requirements explicitly prohibit the use of an appraisal that was engaged by the borrower. This restriction was intended to prevent the slightest chance that an appraiser might be influenced by the borrower in developing his or her value opinion (which, of course, would be a violation of the Ethics Rule).

Appraisers who are contacted by property owners about providing appraisal services for which the intended use is in conjunction with mortgage lending must advise those property owners that the appraisal must be engaged directly by the lending institution. Further, an appraisal report prepared for a client who is the property owner should clearly state that it is not intended for use by a federally insured depository institution in a federally related transaction.

Because of the sensitivity of the appraiser independence issue in lending situations, disclosure in the appraisal report of any prior assignments involving the same property is necessary. Even if the appraisal isn't being prepared for a regulated lender pursuant to FIRREA, it is advisable (though not a requirement) to disclose a prior assignment involving the same property. The appraiser must use his or her discretion, though; there are

situations in which the very fact that the first client had the property appraised is in itself sensitive information that the first client wishes to be kept confidential.

4. **Q. Can I re-address the report or change *the name of the client* but otherwise give the same report to another client?**

A. No. It is improper to “re-address” an appraisal report to another client for three significant reasons.

First, simply changing the name of the client and then forwarding the “re-addressed” report to the second client does not change the first appraiser-client relationship. An appraiser-client relationship, once established, is cast in stone and cannot be changed. Typically, the reason the second party wants to be named as “client” is that they want the appraiser-client relationship, and all the rights and obligations thereof, to be between *them* and the appraiser. The only way to accomplish this is for a new appraiser-client relationship to be established. In short, the only way to be named as “client” in the report is to actually be a client. “Client” is defined in USPAP as the party (or parties) who engage an appraiser in a specific assignment. *To be named as the client in an appraisal report one must have been the party who engaged the appraiser. Tip: An excellent way to firmly establish an appraiser-client relationship is to have a written engagement letter with the client.*

Second, simply changing the name of the client and then forwarding the “re-addressed” report to the second client could harm the confidential nature of the appraiser’s relationship with the first client. While this could be avoided by obtaining the first client’s permission to provide the report to the second client, it still does not resolve the third reason why it is improper to “re-address” the report--which is that to do so is misleading.

Advisory Opinion 10 states in lines 57-58 that simply changing the title page or letter of transmittal (to change the name of the client) without full disclosure of the original appraiser-client relationship is misleading, although this advisory opinion does not explain *why* it is misleading. The reason it is misleading is that the truth about the appraiser-client relationship has been falsified, and falsification of information is unethical. It would mask the true nature of the relationship between the appraiser and the original client – and the nature of that relationship may be inappropriate for certain assignments. Again, the appraisal requirements of FIRREA do not allow the appraiser to be engaged directly by the borrower. If the appraiser’s original client was the property owner, and that property owner were then to seek financing with a regulated lender subject to the requirements of FIRREA, that appraisal report could not be used by that lender because the appraiser was engaged by the borrower.

Appraisers should be aware that the appraisal requirements of FIRREA allow a regulated lender to use an appraisal report that was prepared for another “financial services institution.” This means that lender B can use an appraisal report that was prepared for lender A, even though lender A shows as client. Lender B does not have to be named as client, according to FIRREA requirements. However, usually lender B will “want their name on the report”. Why? Because lender B wants the appraiser- client relationship, and all of the rights and obligations thereof, to be between them and the appraiser. What does this mean? It means that as far as the appraiser is concerned, there is to be a *new appraiser-client relationship*.

Further, it is misleading to simply change the name of the client because the appraiser has not followed the requirements under Standard 1 to identify the client, intended user(s), and intended use with regard to this second client *in the proper sequence*. According to the definitions of intended use and intended user, both must be identified by the appraiser “at the time of the assignment”, *not after* the appraisal process is completed and the report is finished. Even if the original appraiser/client relationship is disclosed, this problem cannot be overcome. So, what should you do if you are asked to “re-address” a report?

A request to re-address a report should be treated as a request to accept a *new assignment* involving the same property, as item 3 above. Again, the question as to whether or not you can do so depends on the issue of confidentiality. Once that issue is resolved, the next questions to be answered are who the intended users are, what is the intended use, and what is the appropriate scope of work for this new assignment? In many such cases there may be little additional work involved in preparing an appraisal for the new client. Perhaps, when all is said and done you will be providing virtually the same data and analysis, and even the same value conclusion (though you won’t discover this until you have completed your analysis). However, you must consider all the assignment parameters for this *new assignment*, which could well be different from those of the previous assignment.

Further, keep in mind that in providing an appraisal to another client, you are extending your liability to that client. As appraisers, we are not in the business of “selling reports”; we are in the business of “selling” our

expertise and our opinions. Every time an addition is made to the list of intended users, our liability grows. From a practical standpoint, both the appraiser and the client need to recognize that their business relationship involves this factor. In sum, a *new client* means there is a *new assignment* which necessitates the preparation of a *new report*.

5. Q. Can I re-assign the appraisal report to another party?

A. “Re-assigning” may mean different things to different parties, so again, be sure you know what the requesting party is asking. In the context of this discussion, “re-assigning” means signing over one’s rights and obligations with regard to the appraisal report to another party.

Since the appraisal report was prepared for and given to client A, that report is no longer yours to “give”, or assign, to anyone else. An analogy would be if you sell your car to party A, you could not then sell it to party B, as it is no longer yours to sell. Client A could assign *their* interests in *their* appraisal report to client B, but the appraiser would not be a part of this process (and should not be asked to be).

6. Q. Can I re-certify the appraisal report to another client?

A. When the request is to “re-certify”, clarification with the client is imperative. “Re-certify” tends to be an abused term. Often it is used to mean “re-assign” or “re-address”, as described above. Often it is erroneously used to mean “update”. Often it is not clear what clients mean when they use the term “re-certify”, and appraisers need to help remedy the confusion. Appraisers *certify* their appraisal reports (i.e., they include a *certification* per SR 2-3), but this certification has nothing to do with the ownership of, or rights to use, the appraisal report. A “re-certification of value” is an entirely different concept; as described in SMT 7, the legitimate meaning of the term “recertification of value” is an assignment in which the appraiser determines whether or not the conditions of an appraisal have been met. This sort of assignment is not an appraisal at all, because in and of itself, it has nothing to do with developing an opinion of value.

Conclusion:

Requests for appraisal services are presented to appraisers in an assortment of ways, and the appraiser’s first tasks are to ascertain (1) exactly what the party is requesting and (2) whether what the party is requesting is appropriate given their intended use. The general rule is that when a *new client* enters the picture and a new appraiser-client relationship is formed, a *new assignment* is involved. This new assignment will require the appraiser to at least *reconsider* or *re-analyze* the process outlined in USPAP’s Standard 1, especially with regard to identification of intended use and scope of work. A *new report* will be provided, appropriately identifying the party who engaged the appraiser this second time around as the client; and if the client is a lender subject to the requirements of FIRREA, the report will disclose prior assignments involving the same property.

In a “re-appraisal” situation such as this, the work involved in developing the value opinion and preparing the report will, in most cases, be far less than it was the first time around. The new report prepared for this subsequent client may, for all intents and purposes, look strikingly similar. The value conclusion might even be the same. But much has changed. The appraiser has considered all of the parameters for a new assignment to meet the needs of the new client given their intended use; including scope of work, selection of report option, purpose of the appraisal, date of value, etc. The appraiser has agreed to extend his or her liability to this new client in allowing that party to rely on his or her value opinion.

Once an appraisal report is provided to a client, it cannot be tampered with. Changing the name of the client (“re-addressing”) is misleading because it falsifies the true relationship between the appraiser and the party who engaged the appraiser in that *particular assignment*. It is improper for clients to request that appraisal reports be tampered with in this manner. It is unethical for appraisers to comply with such request.

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I hope that the preceding article authored by Ms. Coleman and the previous synopsis of the Q & A session with Mr. Wiley help you to better understand the options available to appraisers when the issues of “re-addressing”, “re-assigning”, or “re-appraising” arise. You may want to contact the Appraisal Institute Lum Library to obtain additional resource material on this timely subject.